TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 176.

NG FUNG HO, OTHERWISE KNOWN AS UNG KIP; NG YUEN SHEW, GIN SANG GET, AND GIN SANG MO, PETITIONERS,

vs.

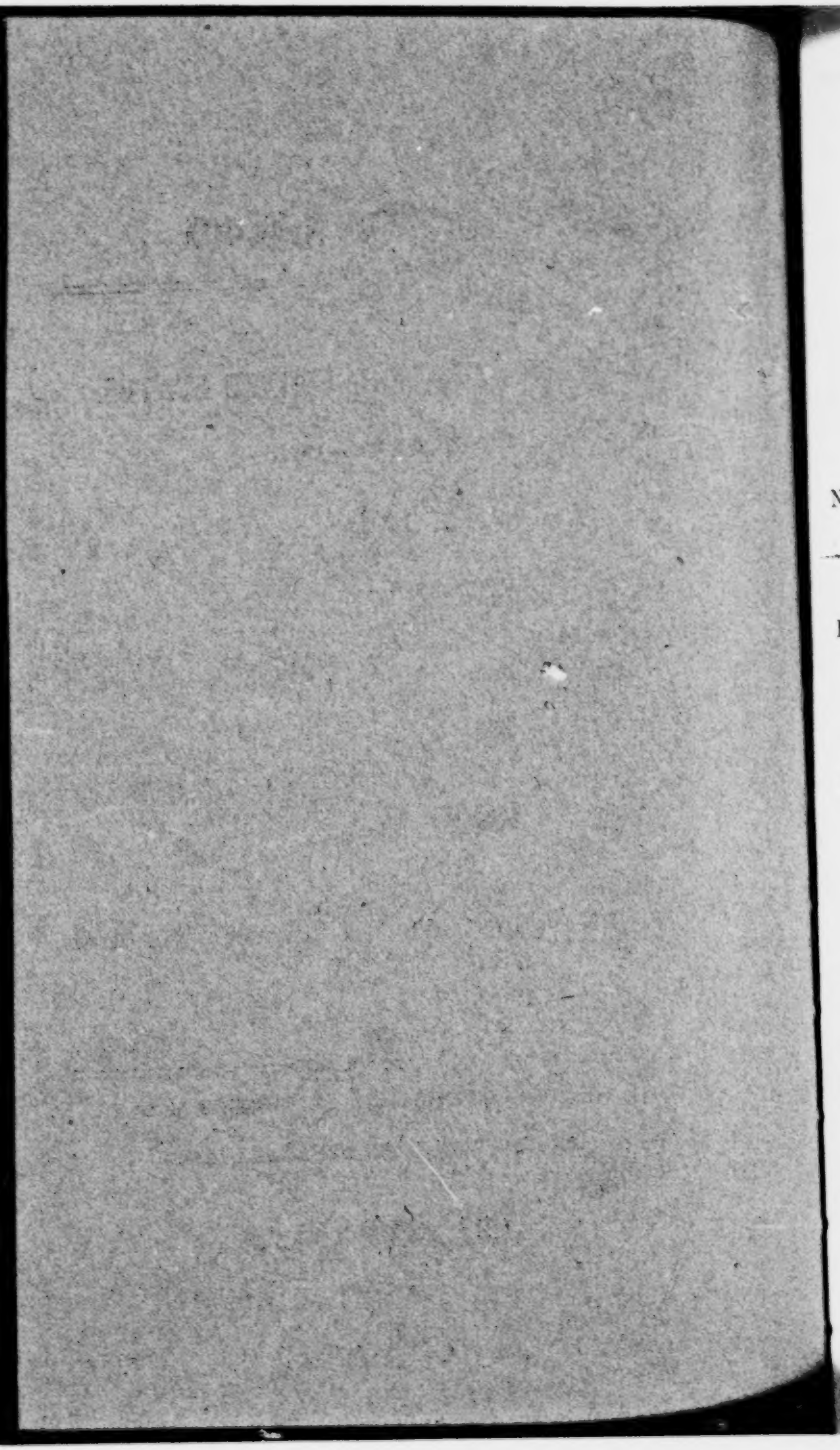
EDWARD WHITE, AS COMMISSIONER OF IMMIGRATION FOR THE PORT OF SAN FRANCISCO.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED DECEMBER 2, 1920.

CERTIORARI AND RETURN FILED FEBRUARY 15, 1921.

(27,992)



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No. 3462

United States

Circuit Court of Appeals

For the Ninth Circuit.

NG FUNG HO, Otherwise Known as UNG KIP, NG YUEN SHEW; LUI YEE LAU, Otherwise Referred to as LOUIE PON; GIM SANG GET and GIM SANG MO,

Appellants,

vs.

EDWARD WHITE, as Commissioner of Immigration for the Port of San Francisco,

Appellee.

Transcript of Record.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

Names and Addresses of Attorneys of Record.

For Petitioners and Appellants:

GEO. A. McGOWAN, Esquire, San Francisco, Calif.

For Respondent and Appellee:

BEN F. GEIS, Esq., Asst. U. S. Attorney, S. F., Cal.

In the Southern Division of the District Court of the United States, for the Northern District of California, First Division.

#16,500.

In the Matter of the Application of NG FUNG HO, Otherwise Known as UNG KIP; NG YUEN SHEW; LUI YEE LAU, Otherwise Referred to as LOUIE PON; GIN SANG GET and GIN SANG MO, on Habeas Corpus.

Praecipe for Transcript on Appeal.

To the Clerk of said Court:

Sir: Please make up Transcript of Appeal in the above-entitled case, to be composed of the following papers, to wit:

1. Petition for Writ of Habeas Corpus.
2. Order to Show Cause and Releasing on Bond.
3. Writ of Habeas Corpus.
4. Return to Writ of Habeas Corpus.
5. Minute Order Submitting Case.
6. Memorandum Opinion and Judgment.
7. Notice of Appeal.
8. Petition for Appeal.
9. Assignment of Errors.

10. Order Allowing Appeal.
11. Stipulation and Order Respecting Immigration Records.
12. Citation on Appeal.

—together with the Certificate of the Clerk attesting the said Record.

Dated, San Francisco, Cal., December 24th, 1919.

GEO. A. McGOWAN,
Attorney for Petitioners and Appellants.

[Endorsed]: Filed Jan. 26, 1920. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [1*]

In the Southern Division of the District Court of the United States in and for the Northern District of California, First Division.

16,500.

In the Matter of the Application of NG FUNG HO, Otherwise Known as UNG KIP; NG YUEN SHEW; LUI YEE LAU; Otherwise Referred to as LOUIE PON; GIN SANG GET and GIN SANG MO, on Habeas Corpus.

Petition for Writ of Habeas Corpus.

To the Honorable, the United States District Judge now Presiding in the Above-entitled Court:

It is respectfully shown by the petition of the undersigned that Ng Fung Ho, otherwise known as Ung Kip, Ng Yuen Shew, Lui Yee Lau, otherwise referred to as Louie Pon, Gin Sang Get and Gin Sang Mo, hereinafter referred to as the detained, are unlawfully imprisoned, detained, confined and re-

*Page-number appearing at foot of page of original certified Transcript of Record.

strained of their liberty under the order of and by the direction of the Secretary of the Department of Labor by Edward White, Commissioner of Immigration for the port of San Francisco, or by his subordinates, under his direction, within the State and Northern District of California, Southern Division thereof. That the said imprisonment, detention, confinement and restraint is illegal, and that the illegality thereof consists in this, to wit:

That it is claimed by the said Secretary and the said Commissioner that the detained are alien Chinese persons, who have been found within the United States in violation of the provisions of a law of the United States, to wit, the Chinese exclusion or restriction laws or acts, and that they were therefore subject to be taken into custody and returned to the country whence they came under the General Immigration laws of the United States of [2] America.

That the said Commissioner now holds the said detained in custody under warrants of deportation of the said Secretary of Labor, copies of which are hereunto annexed and marked Exhibit "A," within the State and Northern District of California, Southern Division thereof, and it is the purpose and intention of the said Commissioner to execute the said warrants of deportation by causing the detained to be deported upon the SS. "Nanking" sailing from the port of San Francisco, at 1:00 o'clock P. M. on February 15th, 1919, and unless this court intervene the said detained will be carried away from their domicile within the United States and deprived of their rights, as in this petition hereinafter expressly set forth.

Your petitioner alleges that the detained do not come within the restrictions or provisions of said Immigration Act; but on the contrary, your petitioner alleges that the action of the Secretary of Labor in issuing the said warrants of deportation and each of them was and is in excess of and in violation of the authority conferred upon him in said Act of Congress of February 5, 1917; generally known as the General Immigration Act, and was and is in transgression of one of the sections therein contained, that is to say: that in section 38 of said General Immigration Act of February 5, 1917, there are contained provisions in the words and figures following, to wit:

> "Sec. 38. That this act, except as otherwise provided in section three, shall take effect and be enforced on and after May first, nineteen hundred and seventeen. * * * PROVIDED FURTHER, That nothing contained in this act shall be construed to affect any prosecution, suit, action or proceedings brought, or any act, thing or matter, civil or criminal, done or existing at the time of the taking effect of this act, except as mentioned in the third proviso of section nineteen hereof; but as to all such prosecutions, suits, actions, proceedings, acts, things or matters the laws or parts of laws repealed or amended by this act are hereby continued in force and effect." [3]

Your petitioner further alleges that it appears from the warrant of deportation of the detained Ng Fung Ho, otherwise known as Ung Kip, which said

warrant is numbered in the records and files of said Secretary of Labor 54267/51, as follows, to wit:

> "who landed at the port of San Francisco, Cal., ex SS. 'Manchuria,' on the 20th day of July, 1915, is subject to be returned to the country whence he came under section 19 of the immigration act of February 5, 1917, being subject to deportation, under the provisions of a law of the United States, to wit, the Chinese Exclusion laws, in that he has been found within the United States in violation of section 6, Chinese Exclusion Act of May 5, 1892, as amended by the act of November 3, 1893, being a Chinese laborer not in possession of a certificate of residence; he re-entered the United States in violation of section 7, Chinese Exclusion Act of September 13, 1888, being a Chinese laborer who failed to produce to the proper officer the return certificate required by said section; and he has been found in the United States in violation of section 2, Chinese Exclusion Act of November 3, 1893, having secured admission by fraud, not having been at the time of his entry a lawfully domiciled exempt returning to resume a lawfully acquired domicile and to follow an exempt pursuit in this country."

Your petitioner further alleges that it appears from the warrant of deportation of the detained Ng Yuen Shew, which said warrant is numbered in the records and files of said Secretary of Labor 54267/51, as follows, to wit:

"who landed at the port of San Francisco, Cal., ex SS. 'Manchuria' on the 20th day of July, 1915, is subject to be returned to the country whence he came under section 19 of the immigration act of February 5, 1917, being subject to deportation under the provisions of a law of the United States, to wit, the Chinese exclusion laws, in that he has been found within the United States in violation of section 6, Chinese Exclusion Act of May 5, 1892, as amended by the act of November 3, 1893, being a Chinese laborer not in possession of a certificate of residence; and he has been found within the United States in violation of rule 9, Chinese rules, and of the Supreme Court decision on which such rule is based, having secured admission by fraud, not having been at the time of his entry the minor son of a member of the exempt classes."

Your petitioner further alleges that it appears from the warrant of deportation of the detained Lui Yee Lau, otherwise referred to as Louie Pon, which said warrant is numbered in the records and files of said Secretary of Labor 54372/2, as follows, [4] to wit:

"who landed at the port of Seattle, Washington, ex SS. 'Yokohama Maru,' on the 15th day of April, 1916, is subject to be returned to the country whence he came under section 19 of the immigration act of February 5, 1917, being subject to deportation under the provisions of a law of the United States, to wit, the Chinese ex-

clusion law, in that: He has been found within the United States in violation of section 6, Chinese Exclusion Act of May 5, 1892, as amended by the act of November 3, 1893, being a Chinese laborer not in possession of a certificate of residence; and he has been found within the United States in violation of section 6, Chinese Exclusion Act of July 5, 1884, having secured admission on a certificate issued under said section, but having become a laborer since admission."

Your petitioner further alleges that it appears from the warrant of deportation of the detained Gin Sang Get, which said warrant is numbered in the records and files of said Secretary of Labor 54267/57, as follows, to wit:

"who landed at the port of San Francisco, Cal., ex SS. 'China' on the 24th day of July, 1916, is subject to be returned to the country whence he came under section 19 of the immigration act of February 5, 1917, being subject to deportation under the provisions of a law of the United States, to wit, the Chinese exclusion laws, in that: He has been found within the United States in violation of section 6, Chinese Exclusion Act of May 5, 1892, as amended by the act of November 3, 1893, being a Chinese laborer not in possession of a certificate of residence."

Your petitioner further alleges that it appears from the warrant of deportation of the detained Gin Sang Mo, which said warrant is numbered in the rec-

ords and files of said Secretary of Labor 54267/57, as follows, to wit:

> "who landed at the port of San Francisco, Cal., ex SS. 'Shinyo Maru,' on the 28th day of April, 1917, is subject to be returned to the country whence he came under section 19 of the immigration act of February 5, 1917, being subject to deportation under the provisions of the law of the United States, to wit, the Chinese exclusion laws in that: He has been found within the United States in violation of section 6, Chinese Exclusion Act of May 5, 1892, as amended by the act of November 3d, 1893, being a Chinese laborer not in possession of a certificate." [5]

And your petitioner therefore alleges that it is affirmatively shown upon the face of each of said warrants of deportation that the action of the Secretary of Labor in ordering each of the said detained persons deported away from and out of the United States under and in pursuance of the terms of the said General Immigration Act which became effective May 1, 1917, was for an act, thing or matter which had been done or performed prior to the said 1st day of May, 1917, and that for said reason the said action of the said Secretary in attempting to deport out of and away from the United States the said detained Chinese persons for an act, thing or matter which had been done or performed prior to the 1st day of May, 1917, was in excess and in violation of the authority conferred upon the said Secretary and in violation of the said restriction contained in said section 38 of said General Immigration law hereinbefore set

forth, and that for said reason the action of the said secretary in issuing the said warrants of deportation and each of them was and is in excess of his jurisdiction and without the authority conferred upon him by the statute in such cases made and provided.

Your petitioner further alleges that the said detained and each of them do not come within the restrictions or provisions of the said General Immigration law, as charged in said warrants, but on the contrary, your petitioner alleges that the finding of the said Secretary of Labor in each of said cases that the said detained persons violated the said Chinese exclusion and restriction acts, as in each of said warrants of deportation set forth, was in excess of the jurisdiction, powers and authority of the said Secretary, and particularly in violation of the terms and provisions of the acts of Congress of May 6, 1882, July 5, 1884, November 3d, 1893, and April 29th, 1902, as amended and re-enacted by section 5 of the Deficiency Act of April 7th, 1904, which [6] said acts are commonly known and referred to as the Chinese exclusion or restriction acts, which said acts provide that Chinese persons found unlawfully within the United States shall be arrested and accorded a trial before a United States Justice, judge or commissioner, and that the said Secretary of Labor is not one of the judicial officers enumerated in said acts, as having authority to determine the question of the legality or illegality of the residence of Chinese persons charged with being illegally within the United States in violation of said Chinese exclu-

sion or restriction acts hereinbefore enumerated. And your petitioner therefore alleges that the action of the said Secretary of Labor in assuming jurisdiction of the said detained and each of them, and in issuing the warrants of deportation and in each of them, acted in violation of the provisions of the concluding section of the said General Immigration Act hereinbefore mentioned.

Your petitioners further allege upon their information and belief that the alleged hearings and each, every and all of them, upon which and as a result of which the said warrants of deportation were issued by the Secretary of Labor, the Assistant Secretary of Labor or the Acting Secretary of Labor, as the case may be, were and each of said hearings are unfair in this, that there was not evidence in said hearings or any of them to sustain the conclusions and findings of the said Secretary of Labor, Assistant Secretary of Labor or Acting Secretary of Labor, as the case may be, that the detained are Chinese aliens who entered the United States or re-entered the United States, in violation of the said Chinese exclusion or restriction acts, or whose subsequent residence within the United States was in violation thereof, or that they or any of them, the said detained, had practiced fraud or had fraud been practiced upon their behalf or on behalf of each or any of them, in the matter of their admission to the [7] United States, or that they or any of them had gained admission to the United States by means of false and misleading statements, or that they or any of them had entered without inspection, or were per-

sons likely to become public charges at the time of their entry, respectively, to the United States, in violation of the said Chinese exclusion or restriction acts or the said General Immigration Act, and all such said charges are makeweights unsupported by the evidence and in violation thereof and said conclusions or findings of the said Secretary of Labor, Assistant Secretary of Labor, or Acting Secretary of Labor, as the case may be, rest upon conjecture and suspicion and not upon evidence, and that there was no substantial or other evidence to sustain or support the said orders of deportation or any of them, so made as aforesaid, nor had the said Secretary of Labor, Assistant Secretary of Labor, or the Acting Secretary of Labor jurisdiction in the premises, and for each of said reasons the said orders or warrants of deportation and each of them, are in excess of the statutory authority of the officer issuing same, and that his said action in so doing was arbitrary and unfair and therefore subject to judicial review.

That your petitioners are in custody of an officer of the said Commissioner of Immigration, and subject to his restraint, but are permitted to verify this petition upon their own behalf and upon behalf of each of them.

That your petitioners have not in their possession or under their control any copy of the hearings or proceedings hereinbefore mentioned, save the warrants or orders of deportation hereinbefore mentioned and hereunto annexed and marked as exhibit "A" as aforesaid. Your petitioners allege,

however, that upon the production of the Immigration Records by the respondent, they do stipulate that the said records may be considered with the same force and effect as if filed with this petition and as exhibits in support and explanation thereof. [8]

That a former application for a writ of habeas corpus was presented in three separate cases upon behalf of different of your petitioners, but that the point herein made was not advanced in any of said petitions, and that the appeals taken from the orders denying said petitions were dismissed by consent of counsel for the respective parties thereto, so that the points herein advanced might be adjudicated. During the pendency of the said former habeas corpus proceedings the detained were each released upon bond in the sum of $1,000, and during the pendency of the proceedings before the said officials of the Department of Labor the said detained were each released upon bond.

WHEREFORE, your petitioners pray that a writ of habeas corpus issue herein, as prayed for, directed to the said Commissioner commanding him to produce the bodies of the said detained together with the time and cause of their detention, before your Honor at a time and place to be therein specified, to the end that the cause of the detention of the said detained may be enquired into, that they may be relieved of restraint and that they may be discharged from custody and go forth without day.

Dated, San Francisco, Cal., January 27th, 1919.

(Chinese Char.) NG FUNG HO,
(Chinese Char.) NG YUEN SHEW,
LUI YEE LAU,
GIN SANG GET,
GIN SANG HO,
Petitioners,

GEO. A. McGOWAN,
Attorney for Petitioners, Bank of Italy Building, Montgomery and Clay Streets, San Francisco, California. [9]

State and Northern District of California,
City and County of San Francisco.—ss.

Ng Fung Ho, Ng Yuen Shew, Lui Yee Lau, Gin Sang Get and Gin Sang Mo, being first sworn upon oath, each for himself and not one for the other, do depose and say:

That they are the petitioners named in the foregoing petition; that the same has been read and explained to them and that they know the contents thereof; and that the same is true of their own knowledge except as to those matters which are therein stated on their information and belief, and as to those matters they believe it to be true.

(Chinese Char.) NG FUNG HO.
(Chinese Char.) NG YUEN SHEW.
LUI YEE LAU.
GIN SANG GET.
GIN SANG MO.

Subscribed and sworn to before me this 27th day of January, 1919.

[Seal] C. M. TAYLOR,
Deputy Clerk, U. S. District Court, Northern District of California.

[Here follows Exhibit "A"—Warrants of Deportation.] [10]

[Endorsed]: Service of the within petition and the order to show cause and releasing upon bail, issued thereon, are hereby admitted and receipt of copies thereof are hereby admitted this 27th day of January, 1919.

BEN F. GEIS,
Asst. United States Attorney.
P. A. ROBBINS,
For the Commissioner of Immigration for the Port of San Francisco, Cal.

Filed Jan. 27, 1919. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [11]

In the Southern Division of the District Court of the United States, in and for the Northern District of California, First Division.

#16,500.

In the Matter of the Application of NG FUNG HO, Otherwise Known as UNG KIP; NG YUEN SHEW, LUI YEE LAU, Otherwise Referred to as LOUIE PON, GIN SANG GET and GIN SANG MO, on Habeas Corpus.

Order to Show Cause and Releasing upon Bail.

Good cause appearing therefor and upon reading the verified petition on file herein, it is hereby ordered that Edward White, Commissioner of Immigration for the Port and District of San Francisco, appear before this Court on the 29th day of January, 1919, at the hour of ten o'clock A. M. of said day, to show cause, if any he has, why a writ of habeas corpus should not issue herein as prayed for; and that a copy of this order be served upon said commissioner, and a copy of said petition upon the United States Attorney.

And it is further ordered that the said Edward White, Commissioner of Immigration as aforesaid, or whoever acting under the orders of the said commissioner, or the Secretary or Labor, shall have the custody of the said detained herein, are hereby ordered and directed to retain the said detained persons within the jurisdiction of this court until its further order herein.

And it is further ordered, that the said detained may each be released upon bond during the further proceedings to be had herein upon each individually giving a bond in the sum of $1,000, the said sum being the same amount fixed in the prior habeas corpus proceedings mentioned in the petition herein, and the United States marshal for this District is hereby authorized to take the said detained persons and each of them into his custody for the purpose of effecting their release upon bond as herein pro-

vided. Said bonds to be furnished by a surety company.

Dated, San Francisco, Cal., January 27th, 1919.

M. T. DOOLING,
United States District Judge.

[Endorsed]: Filed Jan. 27, 1919. W. B. Maling, Clerk. C. M. Taylor, Deputy Clerk. [12]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 16,500.

In the Matter of NG FUNG HO, Alias UNG KIP, NG YUEN SHEW, LUI YEE LAU, Alias LOUIE PON, GIN SANG GET and GIN SANG MO, on Habeas Corpus.

Writ of Habeas Corpus.

The President of the United States of America, to the Commissioner of Immigration, Port of San Francisco, Calif., Angel Island, Calif., GREETING:

YOU ARE HEREBY COMMANDED that you have the bodies of the said persons by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention by whatsoever names the said persons shall be called or charged before the Honorable Maurice T. Dooling, Judge of the United States District Court for the Northern District of California, at the court-

room of said court, in the City and County of San Francisco, California, on the 15th day of February, A. D. 1919, at 10 o'clock A. M. to do and receive what shall then and there be considered in the premises.

AND HAVE YOU THEN AND THERE THIS WRIT.

WITNESS, the Honorable MAURICE T. DOOLING, Judge of the said District Court, and the seal thereof, at San Francisco, in said District, on the 8th day of February, A. D. 1919.

[Seal] WALTER B. MALING,
Clerk.
By C. W. Calbreath,
Deputy Clerk. [13]

Return on Service of Writ.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed writ of habeas corpus on the therein named Edward White, Commissioner of Immigration, by handing to and leaving a true and correct copy thereof with Edward White, Commmissioner of Immigration, personally at San Francisco, in said District, on the 10th day of February, A. D. 1919.

J. B. HOLOHAN,
U. S. Marshal.
By Geo. H. Burnham,
Deputy.

[Endorsed]: Filed Feb. 14, 1919. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [14]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 16,500.

In the Matter of NG FUNG HO, Otherwise Known as UNG KIP, NG YUEN SHEW, LUI YEE LAU, Otherwise Referred to as LOUIE PON, GIN SANG GET and GIN SANG MO, on Habeas Corpus.

Return to Writ of Habeas Corpus.

Comes now Edward White, Commissioner of Immigration at the Port of San Francisco, by P. A. Robbins, Immigration Inspector, and in return to said petition for a writ of habeas corpus, admits, denies and alleges as follows:

I.

DENIES that Ng Fung Ho, otherwise known as Ung Kip, or Ng Yuen Shew, or Lui Yee Lau, otherwise referred to as Louie Pon, or Gin Sang Get, or Gin Sang Mo, or either or any of them, are unlawfully imprisoned, detained, confined and restrained, or unlawfully imprisoned, or detained, or confined, or restrained of their liberty under the order of and by, or under the order of, or by, the direction of the Secretary of the Department of Labor by Edward White, Commissioner of Immigration for the Port of San Francisco, or by his subordinates, or either of them, or by any person or persons whatever within the State and Northern

District of California, Southern District thereof, or elsewhere, or at all.

II.

DENIES that the alleged imprisonment, or detention, [15] or confinement, or restraint, is illegal and particularly in respect to the matter and things alleged in the petition herein, as constituting the illegality, or either or any of them.

III.

DENIES that the said detained, or either or any of them, will be deprived of their rights, or of any right by being deported under or pursuant to said alleged warrants, and in this connection alleges the fact to be that the said detained and each of them were arrested for a violation of the laws respecting the entry of alien Chinese into the United States under and pursuant to a warrant of the Secretary of Labor of the United States, duly and regularly issued and served upon the detained and each of them; that thereafter and heretofore, said detained and each of them were given a full and fair hearing before an Immigrant Inspector, as provided by law; that the said detained and each of them were thereafter and heretofore ordered deported by the said Secretary of Labor, Assistant Secretary of Labor, Acting Secretary of Labor, by warrants duly and regularly issued, as shown by the record of and in the several cases of the said detained; that all the said proceedings, orders and warrants were had, made and issued as provided by and in conformity with the laws, rules and regulations in such cases made and provided.

IV.

DENIES that the action of the Secretary of Labor in issuing the warrants of deportation, or either, or any of them, was or is in excess of, or in violation of the authority conferred upon him by said Act of Congress of February 5, 1917, generally known as the General Immigration Act, or was, or is, [16] in transgression of section 38, or any section of said Act of February 5, 1917, and in this connection alleges the fact to be that the said detained persons, prior to, and at the time of their arrest, were subject to arrest and deportation under and pursuant to the provisions of the said Act of Congress of February 5, 1917, and particularly under and pursuant to the provisions of sections 19 and 38 of said Act, said sections being in part as follows:

Section 19 of said Act provides:

> "That at any time within five years after entry, any alien who shall have entered or shall be found in the United States in violation of any of the laws of the United States, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported. PROVIDED, FURTHER, that the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned, irrespective of the time of their entry into the United States."

Section 38 provides:

> "That this act, except as otherwise provided, in Section 3, shall take effect and be in force on and after May 1, 1917. * * * PROVIDED,

that this act shall not be construed to repeal, alter, or amend existing laws relating to the Immigration or exclusion of Chinese persons, or persons of Chinese descent, EXCEPT AS PROVIDED IN SECTION 19 HEREOF. * * * PROVIDED, FURTHER, that nothing contained in this act shall be construed to affect any prosecution, suit, action, or proceedings brought, or any act, thing or matter civil or criminal, done, or existing at the time of the taking effect of this act, EXCEPT AS MENTIONED IN THE THIRD PROVISO OF SECTION 19 HEREOF."

V.

DENIES that the action of the said Secretary in attempting to deport out of, or away from, the United States, the said detained persons for an act or thing, or matter, which had been done, or performed, prior to the first day of May, 1917, was in excess or in violation of the authority conferred upon the said Secretary, or in violation of said [17] Section 38 of said General Immigration Act, or of any part thereof of said Section, or of said Act, and in this connection alleges the fact to be that the action of the said Secretary of Labor, in issuing his warrant of deportation for the deportation of said detained and each of them, was within the power and authority conferred upon the said Secretary under and pursuant to the said General Immigration Laws and the then existing laws of the United States in such cases made and provided.

VI.

DENIES that the action of the said Secretary, or either of them, in issuing the said warrants of deportation, or either or any of them, was or is in excess of his jurisdiction or without the authority conferred upon him by the statutes in such cases made and provided.

VII.

DENIES that the detained, or either or any of them, do not come within the restrictions and provisions of the said General Immigration Law, as charged in said warrants, but allege the fact to be that each of the detained come within the restrictions and provisions of the said General Immigration Laws, as charged in the said warrants.

VIII.

DENIES that the finding of the said Secretary of Labor in each or any of said cases, that the said detained persons violated the Chinese Exclusion and Restriction Acts, as in each of said warrants of deportation set forth, was in excess of the jurisdiction, powers or authority of the said Secretary, or in violation of the terms, or provision of the acts of Congress of May 6, 1882, or July 5, 1884, or November 3, 1893, or April 29, 1902, or any of said Acts [18] as amended and re-enacted, or amended, or re-enacted by Section 5 of the Deficiency Act of April 7, 1904, commonly known and referred to as the Chinese Exclusion or Restriction Acts.

IX.

DENIES that the action of the said Secretary of Labor, in assuming jurisdiction of the said detained,

either or any of them, or in issuing the warrants deportation, or in either or any of them, acted in olation of the provisions of the concluding section any section of the General Immigration Act here- oefore mentioned.

X.

DENIES that the hearings, or either or any of em, upon, or as a result of which said, or either of id warrants of deportation were issued by the ecretary of Labor, or the Assistant Secretary of abor, or the Acting Secretary of Labor, were, or re, unfair, in any way whatever, but alleges the fact o be that the said hearings and each of them were nd are in all respects manifestly fair and impar- ial.

XI.

DENIES that there was no evidence in said hear- ngs and in each of said hearings to sustain the conclusions and findings, or conclusions, or findings, of the Secretary of Labor and Assistant Secretary of Labor and Acting Secretary of Labor, or either, or any of them, that the detained are Chinese aliens who entered the United States, or re-entered the United States in violation of the said Chinese Exclu- sion and Restriction Acts, and whose subsequent residence within the United States was in violation thereof, and that they, and each of them, the said de- tained, had practiced fraud, and had fraud practiced upon their behalf, and on behalf [19] of each of them in the matter of their admission to the United States, and that they, and each of them, had gained admission to the United States by means of false and

misleading statements, and that they, and each of them, had entered without inspection, and were persons likely to become public charges at the time of their entry to the United States in violation of the said Chinese Exclusion and Restriction Acts, and the said General Immigration Act.

XII.

DENIES that all or any of said charges are makeweights or unsupported by the evidence, or in violation thereof, or that said conclusions, or any of them, or findings, of any of them, of the said Secretary of Labor, Assistant Secretary of Labor, or Acting Secretary of Labor, or either or any of them, rest upon conjecture, or suspicion, or are not supported by evidence.

XIII.

DENIES that there was no substantial evidence, or other evidence to sustain and support the said orders of deportation and each of them, and DENIES that the Secretary of Labor and Assistant Secretary of Labor and the Acting Secretary of Labor did not have jurisdiction in the premises, and DENIES that the said orders or warrants of deportation, or either or any of them, are in excess of the statutory authority of the officer issuing them, or that his, or either of their said action in so doing was arbitrary or unfair, or subject to judicial review, and in this connection alleges the fact to be that there was evidence in said hearings, and each of them, to sustain the findings and conclusions of the Secretary of Labor, Assistant Secretary of Labor and Acting Secretary of Labor, as the case may be, [20] that

he detained and each of them are Chinese aliens who ntered the United States, or re-entered the United States in violation of the said Chinese Exclusion or Restriction Acts and whose subsequent residence within the United States was in violation thereof, and that they and each of the said detained had practiced fraud and had fraud practiced on behalf of each of them in the matter of their admission to and into the United States, and that they and each of them had gained admission to the United States by means of false, fraudulent and misleading statements and that they and each of them had entered without inspection and were persons likely to become public charges at the time of their entry, respectively, to the United States, in violation of the said Chinese Exclusion and Restriction Acts, and the said General Immigration Act; that the findings and conclusions of said Secretary of Labor, Assistant Secretary and Acting Secretary of Labor, and of each of them, is sustained and supported by the evidence; that the orders of deportation and each of them are supported and fully sustained by competent, substantial and sufficient evidence that the said Secretary of Labor, Assistant Secretary of Labor and Acting Secretary of Labor, and each of them, when acting, respectively had full power, authority and jurisdiction in the premises to so act; that the orders and warrants of deportation and each of them were within the power, jurisdiction and statutory authority of the said officers issuing them, respectively, and that in the exercise of the said power and authority they and each of them

acted within and under the authority, conferred upon them and each of them by law, and the said officers did not, nor did either of them, in the exercise of their said authority act arbitrarily, but acted with fairness, impartiality and within the [21] discretion conferred upon them and each of them by the law in such cases made and provided.

WHEREFORE, respondent prays that the said petition be denied and said Ng Fung Ho, otherwise known as Ung Kip; Ng Yuen Shew; Lui Yee Lau; otherwise referred to as Louie Pon; Gin Sang Get and Gin Sang Mo be remanded to the custody of respondent for deportation and for such other and further relief as this Court seems equitable and just.

ANNETTE ABBOTT ADAMS,
United States Attorney.
BEN F. GEIS,
Asst. United States Attorney. [22]

United States of America,
Northern District of California.
City and County of San Francisco,—ss.

P. A. Robbins, being first duly sworn, deposes and says: That he is a Chinese and Immigrant Inspector connected with the Immigration Service for the Port of San Francisco, and has been specially directed to appear for and represent the respondent, Edward White, Commissioner of Immigration, in the within entitled matter; that he is familiar with all the facts set forth in the within return to the writ of habeas corpus and knows the contents thereof; that it is impossible for the said Edward White to appear in person or to give his attention to said matter; that

affiant's knowledge the matters set forth in the turn to the writ of habeas corpus are true, except- g those matters which are stated on information nd belief, and that as to those matters he believes to be true.

P. A. ROBBINS.

Subscribed and sworn to before me this 14th day f February, 1919.

[Seal] C. W. CALBREATH,

Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed Feb. 15, 1919. W. B. Maling, Clerk. By Lyle S. Morris, Deputy. [23]

At a stated term of the District Court of the United States, for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, State of California, on Saturday, the fifteenth day of February, in the year of our Lord one thousand, nine hundred and nineteen. PRESENT: The Honorable MAURICE T. DOOLING, Judge.

No. 16,500.

In the Matter of NG FUNG HO et al., on Habeas Corpus.

(Hearing on Return to Writ of Habeas Corpus.)

This matter came on regularly this day for hearing. Geo. A. McGowan, Esq., was present on behalf of petitioner and detained. B. F. Geis, Esq.,

Assistant United States District Attorney, was present on behalf of the United States. After hearing the respective attorneys, the Court ordered that said matter be submitted on brief to be filed by respondent in ten (10) days. Return to writ of habeas corpus was presented and filed by respondent. [24]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 16,500.

In the Matter of NG FUNG HO, Known as UNG KIP, NG YUEN SHEW, LUI YEE LAU, Known as LOUIE PON, GIN SANG GET and GIN SANG MO, on Habeas Corpus.

(Opinion and Order Quashing Writ of Habeas Corpus and Remanding Prisoners to Custody.

GEO. A. McGOWAN, Esq., Attorney for Petitioners.

ANNETTE ABBOTT ADAMS, United States Attorney, and BENJ. F. GEIS, Esq., Assistant United States Attorney, Attorneys for Respondent.

MEMORANDUM.

RUDKIN, District Judge.

Section 19 of the Immigration Act of February 5, 1917, contains numerous provisions for the deportation of aliens from the United States. In some in-

stances a time limit of three years from the date of entry is imposed, in others a time limit of five years, while in still others there is no time limit at all. The third proviso to the section reads as follows:

> "Provided further, That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of *the of* their entry into the United States."

The repealing clause found in section 38 of the act contains the following proviso: [25]

> "Provided further, That nothing contained in this act shall be construed to affect any prosecution, suit, action, or proceedings brought, or any act, thing or matter, civil or criminal, done or existing at the time of the taking effect of this act, except as mentioned in the third proviso of section nineteen hereof; but as to all such prosecutions, suits, actions, proceedings, acts, things or matters the laws or parts of laws repealed or amended by this act are hereby continued in force and effect."

The petitioner has been ordered deported by the immigration authorities and the sole question before the Court is may a Chinese subject who entered the United States prior to the taking effect of the Immigration Act of February 5, 1917, be deported under its provisions. It will readily be conceded that the act is awkwardly worded to say the least. Exception is grafted on to exception and proviso on to proviso until the meaning, in some instances at least, is well nigh incomprehensible, as is too often the

case with bureaucratic legislation. The office of a proviso is usually to limit or qualify the enacting clause, but this rule has little application to Congressional legislation, because it is a well known fact that new and independent legislation is often enacted under the guise of a proviso to a pending bill. Such is the third proviso to section 19 of the act in question. It enlarges or at least explains what has gone before. On the other hand, the second proviso to section 38 is a proper application of the term. If the proviso to section 38 excepted generally from the provisions of the act, all prosecutions, suits, actions, proceedings, acts, things or matters done or existing at the time of its taking effect, it would doubtless receive the same construction as has been given a [26] similar provision found in section 299 of the Judicial Code, and the act would then be inapplicable to aliens in the United States at the time of its taking effect. But there is excepted from this general saving clause the cases mentioned in the third proviso to section 19 and that proviso is expressly made applicable to all classes of aliens irrespective of the time of their entry into this country. True there is excepted from the third proviso "the exception hereinbefore noted" which doubtless has reference to the time limit imposed on the deportation of certain classes of aliens, but inasmuch as no Court would permit the deportation of an alien after the time fixed by law for such deportation had expired, simply because the act was made reactive, the exception is meaningless. In other words the words last quoted are superfluous

and add nothing to or take nothing from the statute as a whole. If the statute is given the construction contended for by the petitioner it would seem that the third proviso to section 19 is entirely nullified. The sole purpose of that proviso was to make the statute retroactive or applicable to aliens in the United States at the date of its passage and if the repealing clause defeats that purpose there is a plain and manifest repugnancy between the two provisions. Such a conclusion will be avoided, if possible, and I am clearly of opinion that Congress intended that aliens of every class unlawfully in the United States should be subject to deportation under th act regardless of the time of their entry.

I regret the necessity which compels me to disagree with the Circuit Court of Appeals of the Fifth Circuit in Mayo vs. United States, 251 Fed. 275, where the [27] same question was involved, but if consolation be needed I find it in the silent dissent of one of the members of that court.

The writ of habeas corpus is quashed and the prisoners remanded to the custody of the immigration authorities.

[Endorsed]: Filed Jun. 2, 1919. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [28]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 16,500.

In the Matter of NG FUNG HO, Known as UNG KIP, NG YUEN SHEW, LUI YEE LAU, Known as LOUIE PON, GIN SANG GET and GIN SANG MO, on Habeas Corpus.

Notice of Appeal.

To the Clerk of the Above-entitled Court, and to ANNETTE ABBOTT ADAMS, United States Attorney for the Northern District of California.

YOU and each of you will please take notice that Ng Fung Ho, known as Ung Kip, Ng Yuen Shew, Lui Yee Lau, known as Louie Pon, Gin Sang Get and Gin Sang Mo, the petitioners herein, do hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order and judgment made and entered herein on the 2d day of June, 1919, quashing the writ of habeas corpus heretofore issued herein, and remanding the petitioners to the custody of the Immigration authorities.

Dated, San Francisco, California, June 23d, 1919

GEO. A. McGOWAN,

Attorney for Petitioners and Appellants Herein.

[29]

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 16,500.

In the Matter of NG FUNG HO, Known as UNG KIP, NG YUEN SHEW, LUI YEE LAU, Known as LOUIE PON, GIN SANG GET and GIN SANG MO, on Habeas Corpus.

Petition for Appeal.

Come now Ng Fung Ho, known as Ung Kip, Ng Yuen Shew, Lui Yee Lau, known as Louie Pon, Gin Sang Get and Gin Sang Mo, the detained and petitioners, who are the appellants herein and say:

That on the 2d day of June, 1919, the above-entitled court made and entered its order and judgment herein, quashing the writ of habeas corpus heretofore issued herein, and remanding the petitioners to the custody of the immigration authorities, in which said order and judgment certain errors are made to the prejudice of the appellants herein, all of which will more fully appear from the assignment of errors filed herein.

WHEREFORE these appellants pray that an appeal may be granted in their behalf to the United States Circuit Court of Appeals for the Ninth Circuit for a correction of the errors so complained of, and further that a transcript of the record, proceedings and papers in the above-entitled cause, as shown by the praecipe, duly authenticated, may be sent and

transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit.

It is further prayed that during the pendency of the said [30] appeal that the said Ng Fung Ho, known as Ung Kip, Ng Yuen Shew, Lui Yee Lau, known as Louie Pon, Gin Sang Get and Gin Sang Mo may retain their liberty and remain at large under the order heretofore made herein, provided that they remain within the United States and render themselves in execution of whatever judgment is finally entered herein.

Dated, San Francisco, California, June 23d, 1919.

GEO. A. McGOWAN,

Attorney for Petitioners, Detained and Appellants Herein. [31]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 16,500.

In the Matter of NG FUNG HO, Known as UNG KIP, NG YUEN SHEW, LUI YEE LAU, Known as LOUIE PON, GIN SANG GET and GIN SANG MO, on Habeas Corpus.

Assignment of Errors.

Come now Ng Fung Ho, known as Ung Kip, Ng Yuen Shew, Lui Yee Lau, known as Louie Pon, Gin Sang Get and Gin Sang Mo, the petitioners and appellants herein, by their attorney Geo A. McGowan,

Esquire, in connection with their petition for appeal herein, assign the following errors which they aver occurred upon the trial or hearing of the above-entitled cause, and upon which they will rely upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to wit:

FIRST: That the Court erred in quashing the writ of habeas corpus issued herein and remanding the petitioners to the custody of the immigration authorities.

SECOND: That the Court erred in not holding that the allegations contained in the petition herein for a writ of habeas corpus, and the facts presented upon the issue made and joined herein were sufficient in law to justify the discharge of the petitioners from custody as prayed for in said petition.

THIRD: That the judgment made and entered herein is contrary to law. [32]

FOURTH: That the judgment made and entered herein is not supported by the evidence.

FIFTH: That the judgment made and entered herein is contrary to the evidence.

SIXTH: That the Court erred in holding that the Secretary of Labor had jurisdiction to deport for a violation of the Chinese exclusion law by the executive process provided for in section 19 of the Immigration Act of February 5th, 1917, Chinese persons who entered the United States prior to May 1, 1917, the date of the taking effect of the said Immigration Act.

SEVENTH: That the Court erred in holding that a Chinese person domiciled in the United States of

America charged solely with a violation of the Chinese exclusion law could be deported therefor in an executive deportation proceeding as provided for in the general immigration law.

EIGHTH: That the Court erred in holding that there was sufficient or any evidence submitted before the Secretary of Labor to show that there was a likelihood of the petitioner and appellant Lui Yee Lau known as Louie Pon, becoming a public charge at the time of his entry into the United States within the meaning and as the said term is used in the general immigration law.

NINTH: That the Court erred in holding that there was sufficient or any evidence submitted before the Secretary of Labor to show that the petitioners and appellants Gin Sang Get and Gin Sang Mo entered the United States without inspection.

TENTH: That the Court erred in holding that there was sufficient evidence or any evidence submitted before the Secretary of Labor to show that the petitioners and appellants Gin Sang Get and Gin Sang Mo entered the United States without inspection by means of false and misleading statements.

WHEREFORE, the appellants pray that the judgment and order of the United States District Court for the Northern Division of [33] California, Southern Division, First Division, made and entered herein in the office of the Clerk of said Court on the second day of June, 1919, quashing the writ of habeas corpus heretofore issued herein, and remanding the petitioners into the custody of the immigration authorities be reversed, and that this cause

remanded to said lower court with instructions discharge the said Ng Fung Ho, known as Ung Ng Yuen Shew, Lui Yee Lau, known as Louie on, Gin Sang Get and Gin Sang Mo from custody as prayed for in the petition for a writ of habeas rpus herein.

Dated, San Francisco, California, June 23d, 1919.

GEO. A. McGOWAN,
Attorney for Appellants.

[Endorsed]: Service of the within Notice of Appeal, Petition for Allowance of an Appeal, and Assignment of Errors, and receipt of a copy of each hereof is hereby admitted this 23 day of June, A. D. 919.

ANNETTE ABBOTT ADAMS,
United States Attorney.

Filed Jun. 24, 1919. W. B. Maling, Clerk. By C. . Calbreath, Deputy Clerk. [34]

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n the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 16,500.

n the Matter of NG FUNG HO, Known as UNG KIP, NG YUEN SHEW, LUI YEE LAU, Known as LOUIE PON, GIN SANG GET and GIN SANG MO, on Habeas Corpus.

Order Allowing Appeal.

On this 23d day of June, 1919, come Ng Fung Ho, known as Ung Kip, Ng Yuen Shew, Lui Yee Lau, known as Louie Pon, Gin Sang Get and Gin Sang Mo, petitioners and appellants herein, by their attorney, George A. McGowan, Esquire, and present to this Court their notice of appeal, petition praying for the allowance of an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, together with the assignment of errors to be relied upon on said appeal, from the order and judgment made and entered herein on the second day of June, 1919, quashing the writ of habeas corpus heretofore issued herein, and remanding the petitioners to the custody of the immigration authorities, which said appeal is intended to be urged and prosecuted by them, and praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit to the end that their prayer that the said judgment may be reversed might be heard and determined, and that such other and further proceedings may be had in the premises as may seem proper. [35]

In consideration whereof, this Honorable Court does hereby allow the appeal herein prayed for, and orders and directs that the execution of the warrants of deportation made by the Secretary of Labor against each of the said petitioners and detained be stayed pending a hearing and final determination of

the said cases in the United States Circuit Court of Appeals for the Ninth Circuit.

And it is further ordered, that the said Ng Fung Ho, known as Ung Kip, Ng Yuen Shew, Lui Yee Lau, known as Louie Pon, Gin Sang Get, and Gin Sang Mo may retain their liberty and remain at large during the continuance of the appeal proceedings herein under the order heretofore made herein upon the bonds heretofore given herein, provided that said petitioners and appellants remain within the United States and render themselves in execution of whatever judgment is finally entered herein.

Dated, San Francisco, California, June 23d, 1919.

E. S. FARRINGTON,
United States District Judge.

[Endorsed]: Filed Jun. 24, 1919. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [36]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 16,500.

In the Matter of NG FUNG HO, Known as UNG KIP, NG YUEN SHEW, LUI YEE LAU, Known as LOUIE PON, GIM SANG GET and GIM SANG MO, on Habeas Corpus.

Stipulation and Order Respecting Withdrawal of Immigration Record.

IT IS HEREBY STIPULATED AND AGREED

by and between the attorney for the petitioners and appellants herein, and the attorney for the respondent and appellee herein, that the original immigration records in evidence and considered as part and parcel of the petition for a writ of habeas corpus upon hearing of the demurrer and upon the return to the writ in the above-entitled matter may be withdrawn from the files of the clerk of the above-entitled court and filed with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, there to be considered as part and parcel of the record on appeal in the above-entitled case with the same force and effect as if embodied in the transcript of the record and so certified to by the clerk of this Court.

Dated, San Francisco, California, June 23d, 1919.

GEO. A. McGOWAN,
Attorney for Petitioners Appellants.

ANNETTE ABBOTT ADAMS,
United States Attorney for the Northern District of California, Attorney for Respondent and Appellee. [37]

ORDER.

Upon reading and filing the foregoing stipulation, it is hereby ordered that the said immigration records therein referred to may be withdrawn from the office of the clerk of this court, and filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, said withdrawal to be made at the time the record on appeal herein is cer-

tified to by the clerk of this court.

E. S. FARRINGTON,
United States District Judge.

Dated, San Francisco, California, June 23d, 1919.

[Endorsed]: Filed Jun. 23, 1919. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [38]

Certificate of Clerk U. S. District Court to Transcript on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 38 pages, numbered from 1 to 38, inclusive, contain a full, true, and correct transcript of certain records and proceedings, in the matter of Ng Fung Ho. etc., et al., on Habeas Corpus, No. 16,500, as the same now remain on file and of record in this office; said transcript having been prepared in accordance with the praecipe for transcript on appeal (copy of which is embodied herein), and the instructions of the attorney for petitioners and appellants herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of fourteen dollars and thirty-five cents ($14.35), and that the same has been paid to me by the attorney for the appellants herein.

Annexed hereto is the original Citation on Appeal, issued herein (page 40.)

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed the seal of said District Court, this 3d day of March, A. D. 1920.

[Seal] WALTER B. MALING,
Clerk.
By C. M. Taylor,
Deputy Clerk. [39]

(Citation on Appeal.)

UNITED STATES OF AMERICA,—ss.

The President of the United States, to Hon. Edward White, as Commissioner of Immigration for the Port of San Francisco, and to Annette Abbott Adams, U. S Attorney, His Legal Representative Herein, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the Southern Division of the United States District Court for the Northern District of California, wherein Ng Fung Ho, otherwise known as Ung Kip, Ng Yuen Shew, Lui Yee Lau, otherwise referred to as Louie Pon, Gin Sang Get and Gin Sang Mo, are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable FRANK H. RUDKIN, United States District Judge for the Southern Division of the United States District Court for the Northern District of California, this 29th day of November, A. D. 1919.

FRANK H. RUDKIN,
United States District Judge, [40]

[Endorsed]: No. 16,500. Southern Division of the United States District Court for the Northern District of California. In re Ng Fung Ho, et al., on Habeas Corpus, Appellants, vs. Edward White, as Commissioner, etc., Appellee. Citation on Appeal. Filed Nov. 29, 1919. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk,

Copy of the within citation on appeal lodged with me this 29th day of November, 1919.

W. B. MALING,
Clerk Southern Division of the U. S. District Court,
Northern District of California.
By C. M. Taylor,
Deputy Clerk.

Service of the within citation and receipt of a copy thereof is hereby admitted this 29th day of November, 1919.

ANNETTE ABBOTT ADAMS,
U. S. Attorney.

[Endorsed]: No 3462. United States Circuit Court of Appeals for the Ninth Circuit. Ng Fung Ho, Otherwise Known as Ung Kip, Ng Yuen Shew; Lui Yee Lau, Otherwise Referred to as Louie Pon;

Gim Sang Get and Gim Sang Mo, Appellants, vs. Edward White, as Commissioner of Immigration for the Port of San Francisco, Appellee. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed March 3, 1920.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the Southern Division of the United States District Court, for the Northern District of California, First Division.

No. 16,500.

In the Matter of NG FUNG HO, Known as UNG KIP, NG YUEN SHEW, LUI YEE LAU, Known as LOUIE PON, GIN SANG GET and GIN SANG MO, on Habeas Corpus.

Order Extending Time to Docket Case.

Good cause appearing therefor, and upon motion of Geo. A. McGowan, Esq., attorney for the petitioners and appellants herein,—

IT IS HEREBY ORDERED that the time within which the above-entitled case may be docketed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit may be and

the same hereby is extended for a period of thirty (30) days from and after the date hereof.

Dated San Francisco, California, February 25th, 1920.

WM. B. GILBERT,
United States Circuit Judge.

Service of the within order extending time to docket case, and receipt of a copy thereof, is hereby admitted this 25th day of February, 1920.

ANNETTE ABBOTT ADAMS,
United States Attorney, for the Northern District of California.

[Endorsed]: No. 16,500. In the Southern Division of the United States District Court, for the Northern District of California, First Division. In the Matter of Ng Fung Ho, Known as Ung Kip, Ng Yuen Shew, Lui Yee Lau, Known as Louie Pon, Gin Sang Get and Gin Sang Mo. On Habeas Corpus. Order Extending Time to Docket Case.

No. 3462. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16, Enlarging Time to March 26, 1920, to File Record Thereof and to Docket Case. Filed Feb. 25, 1920. F. D. Monckton, Clerk. Refiled March 3, 1920. F. D. Monckton, Clerk.

[Endorsed]: Printed Transcript of Record. Filed May 13, 1920. F. D. Monckton, Clerk.

No. 3462

United States
Circuit Court of Appeals
For the Ninth Circuit.

G FUNG HO, Otherwise Known as UNG KIP, NG YUEN SHEW; LUI YEE LAU, Otherwise Referred to as LOUIE PON; GIM SANG GET and GIM SANG MO,

Appellants,

vs.

DWARD WHITE, as Commissioner of Immigration for the Port of San Francisco,

Appellee.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

PROCEEDINGS HAD IN THE NITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October term, A. D. 1919, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Thursday, the twentieth day of May, in the year of our Lord one thousand nine hundred and twenty. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable ERSKINE M. ROSS, Circuit Judge; The Honorable WILLIAM H. HUNT, Circuit Judge.

No. 3462.

NG FUNG HO, Otherwise Known as UNG KIP; NG YUEN SHEW; LUI YEE LAU, Otherwise Referred to as LOUIE PON; GIN SANG GET and GIN SANG MO,

Appellants,

vs.

EDWARD WHITE, as Commissioner of Immigration for the Port of San Francisco,

Appellee.

Order of Submission.

ORDERED appeal in the above-entitled cause argued by Mr. George A. McGowan, counsel for the appellants, Mr. Assistant United States Attorney Ben F. Geis, counsel for the appellee, submitting cause on brief on file, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October term, A. D. 1919, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Tuesday, the sixth day of July, in the year of our Lord one thousand nine hundred and twenty. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; The Honorable WILLIAM H. HUNT, Circuit Judge.

IN THE MATTER OF THE FILING OF CERTAIN OPINIONS AND OF THE FILING AND RECORDING OF CERTAIN JUDGMENTS AND DECREES.

By direction of the Honorable William B. Gilbert, Erskine Ross and William H. Hunt, Circuit Judges, before whom the causes were heard, ORDERED that the typewritten opinion this day rendered by this Court in each of the following entitled causes be forthwith filed by the clerk, and that a judgment or decree be filed and recorded in the minutes of this court in each of the causes in accordance with the opinion filed therein: * * * Ng Fung Ho, Otherwise Known as Ung Kip, Ng Yuen Shew; Lui Yee Lau, Otherwise Referred to as Louie Pon; Gim Sang Get and Gim Sang Mo, Appellants, vs. Edward White, as Commissioner of Immigration for the Port of San Francisco, Appellee. No. 3462. * * *

n the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3462.

G FUNG HO, Otherwise Known as UNG KIP; NG YUEN SHEW; LUI YEE LAU, Otherwise Referred to as LOUIE PON; GIN SANG GET and GIN SANG MO,

Appellants,

vs.

DWARD WHITE, as Commissioner of Immigration for the Port of San Francisco,

Appellee.

Opinion U. S. Circuit Court of Appeals.

ppeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

efore GILBERT, ROSS and HUNT, Circuit Judges.

UNT, Circuit Judge:

The appellants, Ng Fung Ho, *alias* Ung Kip, Ng uen Shew, Lui Yee Lau, *alias* Louie Pon, Gin Sang et and Gin Sang Mo, are five Chinese persons who ve been ordered deported from the United States der executive deportation procedure for violations the Chinese Exclusion Law (Act of May 6, 1882, d amendments). All of the appellants arrived in e United States prior to May 1, 1917, on which date amendatory statute, known as the General Immiation Law, became effective.

The first question for decision is whether the Secretary of Labor, under section 19 and 38 of the Immigration Act of 1917, and within the limitations stated therein, had authority to arrest and deport on departmental warrant, alien Chinese persons found within the United States in violation of the Chinese Exclusion Law, where entry was made prior to the date the above referred to act went into effect *i. e.,* May 1, 1917.

Pertinent excerpts from the two statutes are as follows: Act of February 20, 1907, section 20:

> "That any alien who shall enter the United States in violation of law, and such as become public charges from causes existing prior to landing, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported to the country whence he came at any time within three years after the date of his entry into the United States."
>
> Section 21: "That in case the Secretary of Labor shall be satisfied that an alien has been found in the United States in violation of this Act, or that an alien is subject to deportation under the provisions of this Act or of any law of the United States, he shall cause such alien within the period of three years after landing or entry therein to be taken into custody and returned to the country whence he came, as provided by Section 20 of this Act."

Act of February 5, 1917, Section 19:

> "That at any time within five years after entry any alien who shall have entered, or who

shall be found, in the United States in violation of this Act, or in violation of any other law of the United States, . . . shall, upon the warrant of the Secretary of Labor be taken into custody and deported. . . . Provided, further, that the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned, irrespective of the time of their entry into the United States." (Third Proviso.)

Section 38: "This act, except as otherwise provided in section 3, shall take effect and be in force on and after May 1, 1917. . . . Provided, that this Act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent except as provided in section 19, hereof. . . . Provided, further, that nothing contained in this act shall be construed to affect any prosecution, suit, action, or proceeding brought, or any act, thing, or matter, civil or criminal, done or existing at the time of the taking effect of this act, except as mentioned in the third proviso of section 19 hereof; but as to all such prosecutions, suits, actions, proceedings, acts, things, or matters, the laws or parts of laws repealed or amended by this act are hereby continued in force and effect.

It will be seen that section 38 contains two exceptions: First "except as provided in section 19 hereof," and second, "except as mentioned in the third proviso of section 19 hereof." Inasmuch as

these exceptions were not included in sections 43 and 28 of the earlier Act of Congress (1907), it is to be assumed they have relation to the sections of the act of 1917 wherein they appear. Their effect is to modify and restrict the provisions of which they are a part, and we think that they accomplish this by excluding from the other provisions of the provisos the classes of aliens enumerated in section 19, to which the exceptions have reference. Section 19 at great length enumerates the classes of aliens subject to arrest and deportation by warrant of the Secretary of Labor and fixes the time where a limit is specified within which aliens subject to arrest may be taken into custody and deported and by the third proviso hereinbefore quoted, with the "exceptions hereinbefore" noted, the provisions of section 19 are applicable to the classes of aliens mentioned without regard to the time of the entry of such classes into the United States. The classes of aliens are not enumerated in the proviso to section 19, but they are clearly referred to. They are also included within the exception to the first proviso of section 38 by reference to the exception as provided in section 19, and also in the exception to the second proviso of section 38 where again reference is made to the exceptions mentioned in the third proviso of section 19. We gain assistance as to the intent of Congress from the report of the Senate Committee on Immigration which had under consideration the bill for the Immigration Act of 1917. The committee (64th Congress Senate Report, No. 352), referred to the provision of section 19 as being made retroactive

"with certain exceptions." It is true that the committee failed to express what "certain exceptions" it had in mind, but the context shows that the exceptions referred to were those "hereinbefore noted" as referred to in the third proviso of section 19. Among the exceptions noted and referred to are these: An alien who shall have entered or who shall be found in the United States in violation of the Act of February 5, 1917; an alien who is hereafter sentenced to imprisonment for one year or more because of conviction in the United States of a crime involving moral turpitude committed within five years after the entry of the alien into the United States; an alien who is hereafter sentenced more than once to a term of imprisonment because of conviction in this country of any crime involving moral turpitude committed at any time after entry. The statute is prospective as to those aliens who enter the United States in violation of the act, while as to the other classes the act is retroactive as to the time of the entry of the alien, but prospective in relation to conviction. Notwithstanding the difficulty of construction, it is quite evident that the purpose of the proviso was to make section 19 applicable without regard to the time of entry into the United States. By changing the language used in the Act of February 20, 1907, so as to make the act apply not only to those "who shall enter," but to those "who shall have entered," there is evidence of intent to make the provisions of section 19 retroactive. Again the report of the committee helps to clearer understanding by the statement that it was intended to continue

the practice established under the Act of 1907 "of expelling aliens who enter or are found here in violation of the Chinese Exclusion Law, adapting the administrative process of the Immigration Act to that class of cases wherever the proceedings are instituted within the periods of limitation specified therein."

Considering it in all its words and in the light of the Senate report, we construe the law to be that an alien who shall have entered or who shall be found in the United States in violation of the Chinese Exclusion Law, shall, at any time within five years after entry and irrespective of the time of entry, whether before or after the passage of the Act of 1917, be taken into custody on the warrant of the Secretary of Labor. In Mayo, Commissioner ex rel. Lee Wong Hin, 251 Fed. 275, the Court of Appeals for the Fourth Circuit, Judge Walker dissenting, expressed a different view. It does not appear, however, that the learned Court had the benefit of the report of the Senate Committee as an aid in the construction of the provisions of the act. But, however that may be, the conclusion we have reached seems to us to be correct and to call for decision in favor of the jurisdiction exercised by the Secretary of Labor. Woo Jan vs. United States, 245 U. S. 552, cited by appellants was decided after the Immigration Act of 1917 was passed and made no reference to the amended or new Immigration Law.

Ng Fung Ho, *alias* Ung Kip, and Ng Yuen Shew were arrested on warrants issued by the Assistant Secretary of Labor, dated September 20, 1917, charged

with being found in the United States in violation of the Chinese Exclusion Law. They were duly arraigned, notified of their rights, had counsel, waived the right to have witnesses subpoenaed and presented their claims by brief filed by counsel. Thereafter the aliens were ordered deported and warrants of deportation were issued. There was evidence from which the conclusion was authorized that Ng Fung Ho, *alias* Ung Kip, at the time of his departure for China was not a merchant within the meaning of the law, but was a laborer and had been a laborer for years before his departure for China, and that when he returned to the United States he again became a laborer. It was therefore found that his reentry was accomplished by falsehood and fraud and that he could not re-enter as a laborer and did not have a laborer's certificate as provided by law. Inasmuch as the son Ng Yuen Shew, to enter, depended upon the status of the father, the decision that the son could not enter must be sustained. Ng Neong vs. White, 260 Fed. 749.

Lui Yee Law was arrested on Departmental warrant dated February 16, 1918, and charged with being in the United States in violation of the Chinese Exclusion Law in that he was a laborer not possessing a certificate of residence; that tho entering as a merchant he has become a laborer; and also that he was a person likely to become a public charge at the time that he entered the United States. He had originally entered in 1915 as a merchant with a section 6 certificate. He was arraigned, had a hearing, was represented by counsel and in due course was

ordered deported and warrant issued. In a judicial proceeding had some time before the present proceeding, it was held that although the mercantile status of the alien when he entered the United States had not been successfully challenged, nevertheless there was evidence to sustain the Department of Labor in holding that the man was a gambler and had been a gambler for some months before his arrest and thus the question was raised whether he was a person likely to become a public charge. The evidence tended to show that about January, 1918, the alien lived in Texas where he was a professional gambler; that about that time he was arrested in a gambling-room; that he pleaded guilty to the charge of gambling and was fined twenty-five dollars. We agree with the ruling that there is nothing to show that the alien obtained his section 6 certificate by fraud or that it was untrue. Lui Hip Chin vs. Plummer, 238 Fed. 763; but upon the evidence we are unable to find that the alien was likely to become a public charge at the time he entered the United States. Having entered in 191—, after producing a section 6 certificate, and not having been a public charge, we cannot see that an arrest in January, 1918, and a plea of guilty and the payment of a fine of twenty-five dollars tends to prove that the alien had criminal tendencies when he arrived in the United States, or was likely to become a public charge. Gegiou vs. Uhl, 239 U. S. 3; Howe vs. United States, 247 Fed. 292; Ex parte Hill, 245 Fed. 687; Ex parte Mitchell, 256 Fed. 229.

In Howe vs. United States, 247 Fed 292, the Court

of Appeals for the Second Circuit held that the words "likely to become a public charge" are meant to exclude only those persons who are likely to become occupants of almshouses for want of means with which to support themselves in the future. This ruling was followed in Ex parte Mitchell, 256 Fed. 229, the Court citing Geigou vs. Uhl, 239 Fed. 229. We agree with those constructions and therefore conclude that the appellant Lui Yee Lau is entitled to a reversal of the judgment against him and to an order of discharge.

Appellants Gin Sang Get and Gin Sang Mo, claiming to be brothers, were arrested under warrants dated in November, 1917, charging that they were Chinese laborers found in the United States in violation of section 6 of the Chinese Exclusion Law of 1892 and amended in 1893, and that they had entered "without inspection by means of false and misleading statements." Hearing was had before the immigration authorities and in due course the Assistant Secretary of Labor ordered the aliens deported; the record also shows that Gin Sang Get entered the United States July 24, 1916, and Gin Sang Mo on April 28, 1917. The record shows that the aliens were examined at the time of entries and thereafter admitted to the United States as citizens thereof. The evidence given at the time of their admission tended to show that they were brothers and were the foreign-born sons of a Chinaman who had theretofore been discharged as a native of the United States by the United States Court at San Francisco. The record further shows that soon after the aliens

were admitted upon investigation it was discovered that certain employees of the Immigration Service at San Francisco had removed the original transcript of evidence concerning the alleged father's landing record. We need not state the evidence at length; suffice it to say that the immigration authorities discovered that the Chinaman had testified in 1917 that he was the father of the two aliens above mentioned, had testified in 1902 that he was not married, and had testified in 1909 that he was married and had named his children but failed to include Gim Sang Get and Gim Sang Mo. Opportunity was given to the aliens to produce the testimony of their alleged father and although it was shown that he was in San Francisco or in the vicinity of that city he did not appear. The fact that the aliens were admitted into the United States and that certificates of identity were issued to them did not foreclose the right of the immigration authorities to institute new proceedings provided they had sufficient reason to believe that the original findings had been founded upon evidence which was false and perjured and that the aliens were not lawfully within the United States. In view of the fact that certificates had been issued, the burden of attack is upon the Government, but if, as in this matter, evidence sufficient to show that the original certificates were invalid has been introduced, deportation may follow. Wong Yee Toom, 233 Fed. 194; Lin Hip Chin vs. Plummer, 238 Fed. 763.

In conclusion, the orders of the District Court quashing the writs of habeas corpus and remanding

petitioners to the custody of the immigration authorities are affirmed as to all except Lui Yee Lau. As to him the order is reversed and he is ordered discharged.

Affirmed in part and reversed in part.

[Endorsed]: Opinion. Filed July 6, 1920. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3462.

NG FUNG HO, Otherwise Known as UNG KIP; NG YUEN SHEW; LUI YEE LAU, Otherwise Referred to as LOUIE PON; GIN SANG GET and GIN SANG MO,

Appellants,

vs.

EDWARD WHITE, as Commissioner of Immigration for the Port of San Francisco,

Appellee.

Decree U. S. Circuit Court of Appeals.

Appeal from the Southern Division of the District Court of the United States for the Northern District of California, First Division.

This cause came on to be heard on the Transcript of the Record from the Southern Division of the District Court of the United States for the Northern District of California, First Division and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the orders of the said District Court quashing writs of habeas corpus and remanding petitioners to the custody of the immigration authorities in this cause be, and hereby are affirmed as to all of the said petitioners excepting Lui Yee Lau and as to the said Lui Yee Lau the order of the said District Court be, and hereby is reversed, and the said Lui Yee Lau is ordered discharged.

[Endorsed]: Decree. Filed and entered July 6, 1920. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

At a stated term, to wit, the October term, A. D. 1919, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Tuesday the seventh day of September, in the year of our Lord one thousand nine hundred and twenty. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; The Honorable WILLIAM H. HUNT, Circuit Judge.

No. 3462.

NG FUNG HO, etc., et al.,

Appellants,

vs.

EDWARD WHITE, as Commissioner, etc.,

Appellee.

Order Denying Petition for Rehearing.

On consideration thereof, and by direction of the Honorable William B. Gilbert, Erskine M. Ross, and William H. Hunt, Circuit Judges, before whom the cause was heard, it is ORDERED that the petition, filed August 4, 1920, on behalf of appellants for a rehearing of the above-entitled cause be, and hereby is, denied.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3462.

In re NG FUNG HO, Otherwise Known as UNG KIP; NG YUEN SHEW; GIN SANG GET and GIN SANG MO (on Habeas Corpus), Appellants,

vs.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco, Appellee.

Order Staying Issuance of Mandate.

GOOD CAUSE APPEARING THEREFOR, and upon motion of Geo. A McGowan, Esq., attorney for the appellants above named, and for the purpose of enabling them to petition the Supreme Court of the United States for the issuance of a writ of *certiorari* to this court in the above-entitled matter:

IT IS HEREBY ORDERED that the mandate herein as affecting these appellants may be and the

same hereby is ordered stayed for the period of thirty (30) days from and after the date hereof.

Dated San Francisco, Cal., Sept. 10th, 1920.

W. H. HUNT,

Judge of the Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Order Staying Issuance of Mandate. Filed September 10, 1920. F. D. Monckton, Clerk.

Service of the within order and receipt of a copy thereof is hereby admitted this 10th day of September, A. D. 1920.

FRANK M. SILVA,
U. S. Attorney,
Atty. for Appellee.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3462.

In re NG FUNG HO. Otherwise Known as UNG KIP; NG YUEN SHEW; GIN SANG GET and GIN SANG MO (on Habeas Corpus).
Appellants.

vs.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco,
Appellee.

Order Staying Issuance of Mandate.

GOOD CAUSE APPEARING THEREFOR, and upon motion of Geo. A. McGowan, Esq., attorney for

ppellants above named, and for the purpose of enbling them to petition the Supreme Court of the Jnited States for the issuance of a writ of *certiorari* o this court in the above-entitled matter:

IT IS HEREBY ORDERED that the mandate ierein as affecting these appellants may be and the ame hereby is ordered stayed for the period of thirty (30) days from and after the date hereof.

Dated San Francisco, Cal., October 9th, 1920.

W. H. HUNT,

Judge of the Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Order Staying Issuance of Mandate. Filed October 8, 1920. F. D. Monckton, Clerk.

Service of the within order and receipt of a copy thereof is hereby admitted this 8th day of October, 1920.

FRANK M. SILVA,
U. S. Attorney.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3462.

NG FUNG HO, Otherwise Known as UNG KIP; NG YUEN SHEW; LUI YEE LAU, Otherwise Referred to as LOUIE PON; GIN SANG GET and GIN SANG MO,

Appellants.

vs.

EDWARD WHITE, as Commissioner of Immigration for the Port of San Francisco,

Appellee.

Praecipe for Transcript of Record.

To the Clerk of the Said Court:

Sir: Please make and furnish me with a certified printed Transcript of the Record (including the proceedings had in said Circuit Court of Appeals) and not less than nine uncertified copies thereof, for use on an application to be made to the Supreme Court of the United States for the issuance of a writ of certiorari under section 240 of the Judicial Code, in the above-entitled cause, the said transcript to consist of a copy of the following:

(1) Printed transcript of record on which the cause was heard in said Circuit Court of Appeals, to which will be added a printed copy of the following entitled proceedings that were had, and of the papers that were filed in said Circuit Court of Appeals, viz.:

(2) Order of Submission, entered May 20, 1920;

(3) Order Directing Filing of Opinion, etc., entered July 6, 1920;

(4) Opinion, filed July 6, 1920;

(5) Decree, filed and entered July 6, 1920;

(6) Order Denying Petition for Rehearing entered September 7, 1920;

(7) Order Staying Issuance of Mandate, filed September 10, 1920;

(8) Praecipe for Transcript of Record;

(9) Certificate of Clerk U. S. Circuit Court of Appeals to said Transcript.

GEO. A. McGOWAN,
Counsel for Appellants.

Service of a copy of the within praecipe is hereby admitted this 8th day of October, A. D. 1920.

FRANK M. SILVA,
Counsel for the Appellee.

[Endorsed]: Praecipe for Transcript of Record. Filed October 8, 1920. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3462.

NG FUNG HO, Otherwise Known as UNG KIP; NG YUEN SHEW; LUI YEE LAU, Otherwise Referred to as LOUIE PON; GIN SANG GET and GIN SANG MO,

Appellants,

vs.

EDWARD WHITE, as Commissioner of Immigration, at the Port of San Francisco,

Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Record Certified Under Section 3 of Rule 37 of the Rules of the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing sixty-seven (67) pages, numbered from and including 1 to and including 67, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, excluding all original exhibits, made pursuant to praecipe of counsel for the appellants, filed on the 8th day of October, A. D. 1920, and certified under section 3 of rule 37 of the rules of the Supreme Court of the United States, as originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this 14th day of October, A. D. 1920.

[Seal] F. D. MONCKTON,
Clerk.

By Paul P. O'Brien,
Deputy Clerk.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Ng Fung Ho, otherwise known as Ung Kip, Ng Yuen Shew; Lui Yee Lau, otherwise referred to as Louie Pon; Gim Sang Get and Gim Sang Mo, are appellants, and Edward White, as Commissioner of Immigration for the Port of San Francisco, is appellee, No. 3462, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Northern District of California, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-second day of December, in the year of our Lord one thousand nine hundred and twenty.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 27,992. Supreme Court of the United States, October Term, 1920. No. 635. Ng Fung Ho, otherwise known as Ung Kip, et al. vs. Edward White, as Commissioner of Immigration, etc. Writ of Certiorari. No. 3462. United States Circuit Court of Appeals for the Ninth Circuit. Filed Feb. 9. 1921. F. D. Monckton, Clerk, By Paul P. O'Brien, Deputy Clerk.

In the Supreme Court of the United States, October Term, 1920.

No. 635.

NG FUNG HO, Otherwise Known as UNG KIP; NG YUEN SHEW, GIN SANG GET, and GIN SANG MO,

vs.

EDWARD WHITE, as Commissioner of Immigration for the Port of San Francisco.

Stipulation as to Return to Writ of Certiorari.

It is hereby stipulated by counsel for the parties to the above entitled cause that the certified copy of the transcript of record now on file in the Supreme Court of the United States shall constitute the re-

turn of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit to the writ of certiorari granted therein.

February 2, 1921.

(Sgd.) JACKSON H. RALSTON,
(Sgd.) GEO. W. HOTT,
Attorneys for Petitioners.
(Sgd.) WM. L. FRIERSON,
Solicitor General.

F.

[Endorsed:] Stipulation as to Return to Writ of Certiorari. Filed February 9, 1921. F. D. Monckton, Clerk, by Paul P. O'Brien, Deputy Clerk

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3462.

NG FUNG HO, Otherwise Known as UNG KIP; NG YUEN SHEW, GIN YEE LAU, Otherwise Referred to as Louie Pon; Gin Sang Get, and Gin Sang Mo, Appellants,

vs.

EDWARD WHITE, as Commissioner of Immigration for the Port of San Francisco, Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Stipulation as to Return to Writ of Certiorari from the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the preceding page to be a full, true and correct copy of a "Stipulation as to return to Writ of Certiorari," filed in the above entitled cause on the 9th day of February, A. D. 1921, as the original thereof remains on file and of record in my office.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 10th day of February, A. D. 1921.

[Seal of United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk,
By PAUL P. O'BRIEN,
Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3462.

NG FUNG HO, Otherwise Known as UNG KIP; NG YUEN SHEW, Ly
Yee Lau, Otherwise Referred to as Louie Pon; Gin Sang Get, and
Gin Sang Mo, Appellants,

vs.

EDWARD WHITE, as Commissioner of Immigration for the Port o
San Francisco, Appellee.

Return to Writ of Certiorari.

By direction of the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, as Clerk of said Court, in obedience to the annexed writ of certiorari issued out of the Honorable the Supreme Court of the United States and addressed to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them to send, without delay, to the said Supreme Court the record and proceedings in the above-entitled cause, do attach to the said writ a certified copy of:

(1) Stipulation as to Return to Writ of Certiorari, the original of which said Stipulation was filed in said cause on the 9th day of February, A, D, 1921; and

(2) Respondents' Exhibits "A" and "C," filed March 3, 1920,

and in accordance with said stipulation, do hereby send this certified copy thereof, together with the original exhibits, to the said Supreme Court as the Return to the said Writ of Certiorari.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 10th day of February, A. D. 1921.

[Seal of United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk,
By PAUL P. O'BRIEN,
Deputy Clerk.

[Endorsed:] File No. 27,992. Supreme Court U. S., October Term, 1920. Term No. 635. Ng Fung Ho, otherwise known as Ung Kip, et al., Petitioners, vs. Edward White, as Commissioner of Immigration, etc. Writ of certiorari and return. Filed February 15, 1921.